2245.

SUPREME COURT OF THE UNITED STATES.

No. 183.

ROBERT FARMER'S HEIRS AND REPRESENTATIVES, PLAINTIFFS IN ERROR,

vs.

THE CITY OF MOBILE ET AL.

IN ERROR TO THE SUPREME COURT OF ALABAMA.

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J. & G. S. Gideon, Printers.

THE UNITED STATES OF AMERICA:

To the Mayor, Aldermen, and Common Council of the city of Mobile, and Joseph Clements, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Alabama, wherein John Doe ex dem. Farmer's heirs is plaintiff in error, and you are defendants in error, to shew cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this first day of September, in the year of our Lord one thousand eight hundred and forty-seven.

HENRY W. COLLIER,
Chief justice of the supreme court of Alabama.

UNITED STATES OF AMERICA,
Southern district of Alabama:

I, John Fitts, clerk of the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, do hereby certify, that the plaintiffs in error have given a bond with sufficient security in the sum of two hundred dollars, conditioned for the payment of the costs of this suit, in the appellate court, which bond is on file in my office.

In testimony whereof at office, in the city of Mobile, I have hereunto set my hand and the seal of said court, this twentieth day of October, A. D. 1847.
[SEAL.]

JOHN FITTS, *Clerk C. C. S. D. Ala.*

Received 22d October, 1847, and on 23d October, 1847, I served a copy of the within citation on Joseph Clements and Blanton McAlpin, esq., mayor of the city of Mobile.

GEORGE HUGGINS,
Sheriff, Mobile county.
By M. J. D. BALDWYN,
Deputy Sheriff.

UNITED STATES OF AMERICA:

The President of the United States, to the honorable judges of the supreme court of Alabama, greeting:

Because in the record and proceedings, and also in the rendition of judgment of a plea which is in the said supreme court, before you or

some of you, being the highest court of law or equity of said State in which a decision could be had in the suit between John Doe on the demise of Farmer's heirs and Richard Roe, the Mayor, Aldermen, and Common Council of the city of Mobile, and Joseph Clements, defendants, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute, or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution or of a treaty, or statute, or a commission held under the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened to the great damage of the said John Doe ex dem. the heirs of Farmer, as by their complaint appears; we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, then, under your seal, distinctly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the Monday of next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, this first day of September, in the year of our Lord one thousand eight hundred and forty-seven.

Allowed by HENRY W. COLLIER,
Chief justice of the supreme court of Alabama.

The State of Alabama, in the supreme court.

JOHN DOE, ex dem. of the heirs of Farmer,
vs.
The MAYOR, Aldermen, and Common Council, &c.

Be it remembered, that on the thirteenth day of January, in the year of our Lord one thousand eight hundred and forty-five, there was filed in the clerk's office of the supreme court a writ of error and transcript of record in words and figures as follows, that is to say:

The State of Alabama, to the clerk of the circuit court of Mobile county, greeting:

Whereas it is represented that in the record and proceedings of a cause tried and determined at a circuit court begun and held for the county of Mobile on the fourth Monday after the fourth Monday of October in the year of our Lord one thousand eight hundred and forty-four,

wherein John Doe, on the demise of Farmer's heirs, is plaintiff, and the Mayor, Aldermen, and Common Council of the city of Mobile, and Joseph Clements, are defendants, manifest error hath intervened to the damage of the said plaintiff.

Therefore we command you to send, under your hand and official seal, a transcript of the record in said cause to the judges of our supreme court, at a term thereof to be holden on the first Monday of January inst., that, if error, there the same may be corrected.

Witness Augustus Brooks, clerk of our said circuit court, at office, this third day of January, in the year of our Lord one thousand eight hundred and forty-five, and of American independence the sixty-ninth year.

Issued 3d day of January, 1845.

Attest: A. BROOKS, *Clerk.*

STATE OF ALABAMA, *Mobile county:*

Pleas before the honorable John Bragg, judge of the circuit court for Mobile county, State of Alabama, at a term of the said court begun and held in and for the said county of Mobile, at the court-house thereof, in the city of Mobile, on the fourth Monday after the fourth Monday October, in the year of our Lord one thousand eight hundred and forty-four.

Declaration in ejectment.

The State of Alabama, Mobile county, in the circuit court of Mobile county, term of April, 1838.

John Doe complains of Miguel D. Eslava, the Mayor and Aldermen of the city of Mobile, and Joseph Clements, in custody, &c., of trespass in ejectment, &c. For that whereas heretofore, to wit, on the day of December, 1837, at the county of Mobile, Catharine Louisa Barbarie, Ann Billup Barde, Daniel R. Brower and Ann B. Brower, his wife, Curtis Lewis and Isabella Lewis, his wife, John T. Lackey and Margaret Lackey, his wife, heirs and legal representatives of Robert Farmer, deceased, had jointly and severally demised to the said John Doe a certain lot or piece of land in the city of Mobile, described as follows, to wit: beginning at a post on the line of William McVoy, at the distance of twenty-four feet north of the northeast angle of Government street and Emanuel street; running thence, north sixty-nine degrees east, (with the line of McVoy,) eighty-nine feet seven inches to a stake, the southeast angle of a brick cotton-shed bearing north seventeen degrees west, distant forty-two feet one inch; thence, north seventeen degrees forty minutes west, two hundred and twenty-four feet to the south boundary of the bake-house lot; thence with said south boundary, south seventy-five degrees fifteen minutes west, eighty-nine feet six inches, to the east boundary of Emanuel street; thence with said street, south seventeen degrees forty minutes east, two hundred and thirty-four feet, to the place of beginning; containing twenty thousand four hundred and ninety-five superficial feet, with the appur-

tenances: to have and to hold the same unto the said John Doe and his assigns from the fourth day of December, 1837, then last past, for and during and unto the full end and term of seven years from thence next ensuing and fully to be complete and ended. And for that whereas also, on the 20th day of December, 1825, at the county aforesaid the said lessors had severally demised other two messuages, lands, and tenements, with the appurtenances, situate in the city aforesaid, to the said John Doe, to have and to hold the same to the said John Doe and his assigns, from the said 20th day of December, 1825, then last past, for and during and unto the full end and term of twenty-one years from thence next ensuing and fully to be complete and ended. By virtue of said several demises the said John Doe entered into the said several messuages, lands, and tenements, and became and was thereof possessed for the said several terms so to him thereof respectively granted; and the said John Doe being so thereof possessed, the said Miguel D. Eslava, the Mayor and Aldermen of the city of Mobile, and the said Joseph Clements, afterwards, to wit, on the day of December, 1837, at the county aforesaid, with force and arms, entered into the said several messuages, lands, and tenements above mentioned, with the appurtenances, which the said lessors had respectively demised to the said John Doe, in manner and form, and for the several terms aforesaid, which are not yet expired, and ejected the said John Doe from his said several premises, and other wrongs to the said John then and there did, to the great damage of the said John of ten thousand dollars, against the peace, &c.; wherefore he brings suit, &c.

JOHN TEST,
Attorney for Plaintiff.

To Miguel D. Eslava, the Mayor and Aldermen of the city of Mobile, and Joseph Clements.

I am informed that you are in possession of or claim title to the premises in this declaration of ejectment mentioned, or some part thereof, and I being sued in this action as casual ejector only, and having no claim or title to the same, do advise you to appear at the next term of the circuit court of the county of Mobile, to be holden at the place of holding said court, on the fourth Monday of this present month, April, 1838, by some attorney of that court, and then and there by rule of the same court, to cause yourselves to be made defendants in my stead, otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession.

Yours, &c.,

RICHARD ROE.

Sheriff's return.

Received 18 April, 1838, and executed the same day a copy of the within bill and notice on the following named persons, to wit, on Miguel D. Eslava, Joseph Clements, and George Walton, mayor of the city of Mobile.

WM. MAGEE, *Sheriff M. C.*
By M. J. D. BALDWYN, *Dep'ty Sh'ff.*

JOHN DOE, on the demise of Farmer's heirs,
vs.
MAYOR and Aldermen of Mobile and Jo. Clements.

The Mayor and Aldermen of the city of Mobile and Joseph Clements, by their att'y, come into court and admit they are in possession of that lot of land on the southeast corner of St. Emanuel and Conti streets, in the city of Mobile, measuring 108 feet on St. Emanuel street, and on Conti street 124 feet, being the King's bake-house lot; they confess also lease, entry, and ouster of the plaintiff from the premises mentioned, and agree to plead not guilty, and go to trial on the titles merely; whereupon the court admits the said Mayor and Aldermen of the city of Mobile, as defendant in the cause in lieu of the casual ejector.

And at the term of the circuit court, begun and held in and for the county of Mobile, State of Alabama, on the fourth Monday after the fourth Monday of October, in the year of our Lord one thousand eight hundred and forty-four, the following proceedings were had.

December 20th, 1844.

Judgment.

JOHN DOE on the demise of Robert Farmer's heirs,
vs.
THE MAYOR and Aldermen and Common Council of the city of Mobile, and Joseph Clements.

This day came the parties, by their attorneys, and thereupon came a jury of good and lawful men, Gorham Davenport, and eleven others, who being sworn to try the issues joined between the parties on their oaths do say, we find the defendants not guilty of the trespass in the declaration of ejectment mentioned. It is therefore considered by the court, that the Mayor, Aldermen, and Common Council of the city of Mobile, and Joseph Clements, defendants, go hence, without day, and recover of the plaintiff the costs in and about this suit expended.

Bill of exceptions.—Bill of exceptions.

DOE, ex dem. Farmer's heirs,
vs.
ROE, MAYOR and Aldermen of the city of Mobile, and Joseph Clements, tenant, &c. } Ejectment.

Mobile circuit court.

Be it remembered, that, on the trial of this cause, the plaintiff, to maintain the issue on his part, produced and read to the court and jury from the third volume of the American State Papers, title Public Lands, page 18, an abstract of the title to the lessors of the plaintiff, being claim

No. 45, and which it is agreed may be read from the said book on the hearing of the cause in the supreme court of this State, or the United States, if it shall be carried thence. He likewise read to the court and jury the act of Congress, passed the 8th day of May, 1822, confirming said claim. He further read to the court and jury a patent from the United States, issued in pursuance thereof, dated the 14th day of November, 1837, for the premises in question, granted to the heirs of the said Robert Farmer in right of Philip Gonjon de Grondel, wherein the said premises are described as follows, to wit: Beginning at a post on the line of the claim of William McVoy, at the distance of twenty-four feet north of the northeast angle of Government street and Emanuel street, running thence, north sixty-nine degrees east, (with the line of McVoy) eighty-nine feet seven inches to a stake, the southwest angle of a brick cotton shed, bearing north seventeen degrees west, distance fifty-two feet one inch; thence, north seventeen degrees forty minutes west, two hundred and twenty-four feet to the south boundary of the bake-house lot; thence with said boundary, south seventy-five degrees fifteen minutes west, eighty-nine feet six inches, to the east boundary of Emanuel street; thence with said street, south seventeen degrees forty minutes east, two hundred and thirty-four feet to the place of beginning, containing twenty thousand four hundred and ninety-five superficial feet English, and being a lot in the city of Mobile, and State of Alabama, in township four south, of range one west, in the district of lands subject to sale at St. Stephen's, Alabama," a copy of which patent is hereto attached as a part of this record. The plaintiff proved the defendant in possession of the premises, the particular location thereof, the heirship of the lessors, &c. And it was further proved on the part of the plaintiff that Robert Farmer was a British subject, a native of North America, and died in Mobile about the year 1780 or '81, as appears from the deposition of Madame Beaumont hereto attached as a part of this record. That he was an officer of the British army at the time of his death; that the family, shortly after the conquest of Spain of that province, removed from the province, and none of them returned during the whole period of the Spanish supremacy. And that De Vobicey, father of one of the lessors, came to Mobile in 1818 or '19, to set up the claims of the family. The defendants, for the purpose of maintaining their issues, introduced the act of Congress of the 26th of May, 1824, entitled "an act granting certain lots of ground to the corporation of the city of Mobile, and to certain individuals of said city," and claimed the lot in dispute as a portion of the bake-house lot specified in said act.

The defendant produced no official survey nor patent from the land office for the lot, but relied alone on said act. To establish the boundaries of the said lot, they had the depositions of Catharine Walters, Thaddeus Sandford, and Nicholas Weeks, taken by commission issued and executed regularly, which said depositions are hereto attached as a part of this record. The plaintiff objected to the reading of the depositions, because the evidence was irrelvant, incompetent, and improper

under the issue, and went to contradict, to vary, and to change the legal import and terms of the patent introduced by the plaintiff.

The court overruled the objection, and suffered the depositions to be read, to which the plaintiff excepts. The defendants called a number of witnesses and examined them as to the marks and memorials that existed of the bake-house lot, as it was used and occupied in Spanish times, and as to those which remained after the departure of the Spanish government, (none of which appeared in the patent under which the plaintiffs claimed, either as landmarks or otherwise,) nor are they now visible, nor did any of the witnesses swear that they were the lines of the lot aforesaid, nor was it proved who put them there, or when they were put there. And proved the facts of the possession by the adjoining proprietors, Joaquim de Orsona and Miguel Eslava, in Spanish times; and that in 1824, when the lot was taken by the defendants, the mayor and aldermen of said city leased a portion to third persons, without objection by the plaintiffs' lessors, or the heirs of Eslava, that the witnesses knew of; (four of these witnesses were members of the corporation in 1824,) both of whom claimed the lot south and bounding on the King's bake-house, and that no suit had been brought before this suit for the same; that the witnesses knew of no written evidence of any suit was before the jury. That improvements had been made on the lot by the defendants, on the line as now claimed by them.

The object of all this testimony on the part of the defendant being to shew that the King's bake-house lot was as it is claimed to be by the defendants, and to shew that the defendants are not in possession of any lands that did not form a portion of the said lot, and that the courses and distances laid down in the patent conflict with the right of defendants, which evidence was objected to by the plaintiff as irrelevent, improper, and incompetent, which exceptions were overruled by the court. The defendants further to establish their southern boundary line, proved that lot next was claimed by Joaquim de Orsono in Spanish times, and was used and improved by him; that he parted with his possession and title to Miguel Eslava, who was at the time commissary and storekeeper for the Spanish troops at Mobile, who was in possession when De Vobiscey came to the State, and who has been controverting the right of Farmer's heirs ever since, and that his heirs are now in possession of the said lot, and have been for more than twelve years. The defendants proved that their claim to the possession was not disputed by said Eslava or his heirs; further, the defendants produced the book of translated Spanish records, from the county court of Mobile county, and offered to read a deed from Francis Fontanelle to Joaquim de Orsono, on record in said book, for the lot south, calling for the bake-house lot as the northern boundary, bearing date in 1801, and a copy of which is attached as part of this record. The plaintiffs' counsel objected to this deed because the same was irrelevant, and incompetent, and because there was no evidence that the same had ever been offered to any commissioner appointed under the acts of Congress for the examination of private land claims, under the treaty between the United States and

France. The court overruled the objections, and the deed was read to the jury, to which the plaintiff excepts. The French grant to Grondjil Collins for the boulangerie du roi for its northern boundary, was before the jury, and read by defendant's counsel. There was no evidence that the claim to possession was ever disputed by Eslava or his heirs, but there was evidence that the corporation, shortly after they took possession of the lot (as testified by Josiah Wilkins, who was a member of the corporation at the time,) procured the fence that bounded the bake-house lot on the south to be moved in the night time, some thirty or thirty-five feet south, upon the premises claimed by the plaintiffs, while the said Vobiscey, one of the heirs of Farmer, was in possession thereof. This was the substance of all the evidence given, before the jury retired to consult on their verdict. The court read to the jury, as a part of its charge, a statement and opinion of the supreme court of the State of Alabama, in this same case, reversing the judgment heretofore rendered in this court in favor of the plaintiff, (which statement and opinion is in these words and figures, (see the manuscript hereto appended) marked A, and instructed the jury, that the said statement and opinion was the correct and true law of the case, to which the plaintiff excepted. The court in its charge to the jury further instructed them, that the act of Congress, of the 26th May, 1824, conferred upon the defendants as perfect and conclusive a title, and their claim and title to the bake-house lot was precisely equal in every respect under said act, as the plaintiff's title was under the patent, on which he claimed, and was of equal dignity with the same. After the charge had been delivered by the court to the jury, and before they retired from the box, the plaintiff requested the court to instruct the jury, that the act of Congress of the 26th May, 1825, granted to the said defendants the bake-house lot as a mere donation lot, and that the register and receiver at St. Stephen's were authorized, under the act of Congress of the 8th May, 1822, and other acts of Congress, to direct the manner and mode of surveying and making the location and division between these parties; and having done so, no parol evidence is competent to set aside, to vary, or change the location so made under their location and set forth in the patent; which instruction the court refused to give, and to which the plaintiff excepts. The plaintiff further requested the court to instruct the jury, that no survey, plat, or other description of the premises in question, can out-weigh or supercede the survey set forth in the patent under which the plaintiffs claim, unless it be shewn by the defendants in a patent, or an instrument of evidence of equal grade and authority with a patent; which instructions the court refused to give, and to which the plaintiff by his attorney excepts. To all which charges and refusals to charge, the plaintiffs by their counsel except, and pray that their exceptions may be sealed and made a part of the record, which is done accordingly.

G. BRAGG. [SEAL.]

THE STATE OF ALABAMA,
Mobile county:

I, Augustus Brooks, clerk of the circuit court of Mobile county, State of Alabama, do hereby certify, that the foregoing is a true and correct transcript of all the proceedings had in the foregoing cause, as full and complete as the same remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed the [SEAL.] seal of the said court, this second day of January, in the year of our Lord one thousand eight hundred and forty-five.

Attest: A. BROOKS, *Clerk.*

Agreement.

It is agreed in this cause, that no notice of a writ of error shall be required, but that it shall be dispensed with, and may be returned to the next term of the Supreme Court.

JOHN TEST,
Atty. for plaintiff.
JOHN A. CAMPBELL,
For defendant.

The United States of America, to all to whom these presents shall come, greeting:

Whereas there has been deposited in the General Land office a certificate, numbered fifteen, of the register and receiver of the land office at St. Stephen's, with a plat of survey of the lot of land therein mentioned, under the provisions of the act of Congress, approved on the eighth day of May, eighteen hundred and twenty-two, entitled "An act of Congress confirming claims to lots in the town of Mobile, and to land in the former province of West Florida, which claims have been reported favorably on by the commissioner appointed by the United States, as the claim of the heirs of Robert Farmer, in right of Philip Gonjon de Grondel, numbered twenty-seven in abstract numbered seven of the register and receiver, and as being bounded and described as follows, to wit: Beginning at a post on the line of the claim of Wm. McVoy, at the distance of twenty-four feet north of the northeast angle of Government street and Emanuel street, running thence north sixty-nine degrees east (with the line of McVoy,) eighty-nine feet seven inches, to a stake, the southwest angle of a brick cotton shed, bearing north seventeen degrees forty minutes west, distant fifty-two feet one inch; thence, north seventeen degrees forty minutes west, two hundred and twenty-four feet to the south boundary of the bakehouse lot; thence, with said south boundary, south seventy-five degrees fifteen minutes west, eighty-nine feet six inches, to the east boundary of Emanuel street; thence with said street, south seventeen degrees forty minutes east, two hundred and thirty-four feet, to the place of beginning; containing twenty thousand four hundred and ninety-five superficial feet, English measure, and being a lot in the city of Mobile and State of Alabama, in township four south, of range one west, in the district of land subject to sale at

St. Stephen's, Alabama. Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the said act of Congress, have remised, released, and forever quit claimed, and by these presents do remise, release, and forever quit claim, unto the said heirs of Robert Farmer, and their heirs, the said land above described, subject to any just claim, to all and every part thereof, all and every person or persons, bodies politic or corporate, derived from the United States, or from either the British, French, or Spanish authorities. To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, and to any such claim or claims as aforesaid, unto them, the said heirs of Robert Farmer, and to their heirs and assigns forever. So that neither the United States, or any other person claiming under them, except as is provided in said act, and the reservations aforesaid, may, or can, set up any right or title thereto.

In testimony whereof I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the fourteenth day of November, in the year of our Lord one thousand eight hundred and thirty-seven.

[SEAL.]

MARTIN VAN BUREN.

By A. VAN BUREN, *Secretary*.

By the President:

JOS. S. WILSON,

Acting Recorder of the General Land Office ad interim.

Recorded, vol. L, pages 27, 28, and 29. Examined.

The above is a true copy of the patent to the lessors of the plaintiff.

French patent.

Louis de Kerline, chevalier of the royal and military order of St. Louis, captain of a vessel of his majesty, and governor of the province of Louisiana, and John Baptiste Claude Bobé de Cloreaux, counsellor of the King in his council, commissary of the marine, ordinator in the said province, upon the demand which has been made to us by Mr. Grondel, chevalier of the royal and military order of St. Louis, captain commanding of the Swiss troops of the regiment of Hauteville, in the department of Mobile, to grant to him a piece of land, which is near the place of the new quarters, at Mobile, called the direction fronting the fort, consisting of about fourteen toises of front upon the esplanade of the depth which remains of the establishment of the King's bakehouse, (boulangerie du roi:) We, in virtue of the power confided to us by his majesty, have granted, and by these presents do grant, unto the said Mr. Grondel the land above described, to him and his heirs, having cause to enjoy the same fully, peaceably, with all the rights appertaining thereto, as of a property belonging to him; upon condition that he will put himself in possession of the said land in presence of those whom

it joins, or of those well and truly called; and that he will, besides, put the said lands in a condition to be valuable in one year and a day, which, if not done, on failure to do so, it shall be remitted to the domain of his majesty, who can in that case dispose of it as if this grant had never been made, with the duty and burthen of paying the taxes due to the king, if any shall hereafter be required in Louisiana country.

Given at New Orleans, under the seal of our arms, and the countersigns of our secretaries, the 19th day of April, 1757.

BOBE DICLONEUR. [SEAL.]

KERLINEAR.
[SEAL.]

By my lord: CHITON DE SELAQUE.

The above is a true and correct translation of the original French patent to Grondel, given in evidence by the defendants.

A.

MAYOR AND ALDERMEN OF MOBILE
vs.
THE HEIRS OF FARMER.

1. The power given to the registers and receivers by the different acts of Congress, to determine between conflicting and interfering claims, and to direct the manner of locating and surveying them, applies only to confirmations of imperfect grants by the former proprietors of the country. These officers have, therefore, no power to locate and direct the survey of a disputed line, where one of the parties claim by virtue of a complete and unconditional grant, as in the case of the donation to the Corporation of Mobile of the hospital and bake-house lots by the act of the 26th May, 1824.

Error to the circuit court of Mobile. Ejectment by the defendants in error against the plaintiffs in error.

The plaintiff below, to sustain his case, introduced in evidence a patent from the United States to the lessors of the plaintiff, for certain lands in the city of Mobile, and proved that the premises sued for were within the lines of the patent.

The plaintiff also read the deposition of James Magoffin, and certain proceedings of the land office at St. Stephen's, in relation to the boundary of the lot known as the "bake-house lot," and other testimony proving the heirship of the parties, which need not be stated.

The defendants relied on the act of Congress of the 26th May, 1824, entitled, "An act granting certain lots of ground to the corporation of the city of Mobile, and to certain individuals of said city;" and offered to prove that the lines of the bake-house lot in the city of Mobile, at the date of the act, comprised the *locus in quo*. The plaintiff objected to this evidence on the ground that the transcript of the record attached to the evidence of James Magoffin, in which the limits of the bake-house lot had been ascertained by him, was conclusive. The court sustained the objection and excluded the evidence, and charged th

jury that the heirs of Robert Farmer were entitled to the property described in their patent; that the corporation was entitled to the bake-house lot; but that the decision of the officers of the land office at St. Stephen's was conclusive of the question. To which the defendant excepted, and which he now assigns for error.

Campbell, for the plaintiff in error.

The title of the plaintiff in error arises under the act of 26th May, 1824, by which the bake-house lot is vested in them. This act amounts to a complete grant, and any question arising upon it is a judicial, and not a political question. What lands are included in the grant is not a question for the land office, but the court. 6th Cr. 128; 8 id. 244, 9. 6 Peters, 741; 12 id. 454; 14 id. 414. 3 Dall. 456.

The defendant's title is inferior. The patent bears date in 1837; the terms of renunciation are *in presenti*, and no evidence of title prior to 1824 is presented.

The register and receiver at St. Stephen's were not authorized to settle conflicting boundaries. Their power is exhausted by the settlement of the question of location for the purposes of the land office. Whether that location is accurate, so far as third persons who claim by grant previous to the act of location are involved, is a question which can only be settled by the parties themselves, or by courts of justice. Instructions and opinions of the land office, Part [ ] 1445, § 6, 5; 6 *Peters*, 735.

Phillips, for the defendant in error.

The title of the heirs of Farmer is derived from the act [of] 1822. Under that act the certificate of the register and receiver was made and confirmed by Congress, and the plat of survey made the title. It is therefore older than that of the plaintiff in error, which commenced in 1824.

The effort now is, to shew that the north line, as fixed by the plat of survey confirmed by the act of 1822, was too far to the north. If the confirmed report, instead of being specifically located, had described it generally as the lot of Farmer's heirs, and in 1824 a donation to the plaintiff of the lot known in Spanish times as the "King's bake-house lot," reserving the rights of others under such circumstances, an inquiry ordered by the common grantor, and his decision thereon as to the boundary, ought to be conclusive as a mere declaration of a fact which always existed; the more especially as the opposite party submitted to the jurisdiction, examined witnesses, and contested their rights.

Ormond, J. By the act of the 26th May, 1824, the United States granted to the mayor and aldermen of the city of Mobile, "all right and claim of the United States to the lots known as the 'Hospital and bake-house lots,' containing about three-fourths of an acre in the city of Mobile." Land Laws, 398.

On the 14th November, 1837, a patent issued from the General Land Office in favor of the heirs of Robert Farmer, upon a confirmation of

a claim made by virtue of the act of the 8th May, 1822, (1 Land Laws, 352); which, among other designated boundaries, calls for the south boundary of the "Bake-house lot" as one of the boundary lines of the land conveyed by the patent; and the controversy in this case is, what is the south boundary of the bake-house lot? To establish this boundary, the plaintiffs rely upon a decision made by the register and receiver at St. Stephen's, which they insisted, and the court below held, to be conclusive of the fact.

The right of these officers to determine this question is attempted to be derived from the various acts of Congress giving them power to determine between conflicting and interfering claims, and also to direct the manner of locating and surveying the lands the title to which had been confirmed. (See Land Laws, Part 1, 348, 352, and 455, and other acts, to which these are supplementary.) There can be no doubt that Congress may attach to a pure donation such terms as it pleases, and may invest the subordinate officers of the United States with power to determine questions of facts, and to ascertain and settle conflicting claims. Of this the different pre-emption laws furnish examples. Whether it has such power in relation to the confirmation of imperfect titles derived from the former proprietors of the country, is a question which does not arise in this case.

The power conferred on the registers and receivers to decide upon conflicting claims relates only to the confirmation of imperfect titles derived from the French, British, and Spanish governments; but the grant of the bake-house lot to the corporation of Mobile was an unconditional donation of all right and title of the United States in and to the thing granted, which immediately passed to the grantee. The previous acts of Congress, therefore, giving to the receiver and register power to ascertain and settle the boundaries of conflicting confirmed claims have no application, and it was not competent for Congress to attach such a condition to it subsequently, and it has made no such attempt. The description of the thing granted in the act is sufficient to distinguish it from other lots in the city, and by the aid of extrinsic testimony its boundaries may be ascertained. Blake vs. Doherty, 5 Wheaton, 359.

By the treaty, the United States acquired all the title of the Crown of Spain to these lots as public property. The question then is, what was the boundary of these lots in Spanish times? This is a question of fact, and if a controversy should arise in relation thereto between the corporation and others claiming title to the adjoining lots, it can only be settled by those tribunals appointed by the constitution and laws for that purpose, unless the parties interested should voluntarily submit to some other mode.

We are relieved in this case from the necessity of considering whether the recital in the patent of Farmer's heirs of the boundary line would be conclusive, because the patent does not profess to locate the north boundary line, other than by calling for the "south boundary of the bake-house lot." The precise location must therefore be ascertained

by testimony, shewing where the south line was when in the occupancy of the Crown of Spain. Such as its limits then were, it passed by the treaty to the United States, and with those limits it was granted to the corporation.

It results from this examination that the court erred in determining that the decision of the register was evidence of the boundary line of the bake-house lot, and its judgment is therefore reversed, and the cause remanded.

A true copy of the original on file and of record in my office.

Attest: JAMES B. WALLACE, *Clerk*.

Mrs. Beaumont's testimony.

Deposition of Madame Catharine Beaumont.

The said witness, Catharine Beaumont, being first duly sworn, upon her oath, deposeth as follows:

That to the best of her knowledge and belief, she has seen Major Robert Farmer, but was too young to remember much or any thing of his person. On the Tensaw river she had some recollection of Major Robert Farmer's family, but was well acquainted with Mrs. Farmer, Major Farmer's wife, and the children in London. Her opportunity of being acquainted with them was, that she resided near them. She says that she does not remember at Mobile when they resided there. Does not know when the family came to Mobile. She says that her mother and Mrs. Farmer, and others, have often told her, that they left Mobile at the time of the Spanish war, or what was called Don Galvez war. They were compelled to leave Mobile by the Spaniards, and the Spaniards took possession of their property. Galvez took possession of Major Farmer's house for his quarters. She says that Robert Farmer, senior, is dead; died in Mobile and was buried in the fort. When he died he left a family, consisting of a wife, three daughters, and two sons; he left five children. The names of the children were Robert, Nancy, Betsy, Catharine, and Thomas. She knows by hearsay that Catharine and Nancy were living; she knows that Betsy is dead, and by report that Robert and Thomas are dead. Nancy is residing near Philadelphia, (Pennsylvania,) and Catharine in New York; they have resided there many years. Nancy, Betsy, and Catharine, and Robert were married. Nancy married Captain Barde, Betsy married Mr. De Vobiscy, Catharine married Mr. Otto Barbarie, and Robert married a Quaker lady in Philadelphia. Mr. De Vobiscey, Captain Barde, and *and* Barbarie are all dead. The name of his grand children was Elizabeth De Vobiscey, the daughter of Mr. and Mrs. De Vobiscey. The witness states that she resided near the family in London, and was very intimate with the family.

To the second interrogatory on the part of the plaintiff she answers and says, that she was not acquainted with his property at the time of his death. The witness says, she was too young at the time to know whether he owned property or not; has heard her mother and others

say, that he owned the plantation when he resided on the Tensaw river, and also houses and lots in Mobile; she does not know whereabouts in the city of Mobile that the property was situated. Does not know whether any part of it lies on Government street. Does not know where Government street is. Has heard her mother, Mrs. Farmer, and the family, talk of their houses and the King's bake-house in Mobile, and was told that he had the best house in Mobile. Has heard the family say that there were buildings on the lots. Does not know who took them away after his death. Does not know the value of the property at or near his death. Does not know the location of the lot near the King's bake-house, or its relative situation to the fort. Has always understood from her mother, the family, and others, that Major Robert Farmer was a native of North America, and was related to the Laurence, Kane, and Davis families in New York. Mrs. Farmer was born in Yorkshire, England. Major Farmer, she thinks, was related to Commodore Truxton, of the American navy. Has had conversations with the family, more or less, of their pedigree during her life. Does not know of any thing particular further.

C. BEAUMONT.

I, Loyal Case, do hereby certify, that the deposition of Madame Catharine Beaumont, the witness within named, was duly taken before me in manner and form, and at the time and place, as is within mentioned.

LOYAL CASE.

Deposition of Catharine Mottus.

Interrogatories to be propounded to Catharine Mottus, or Catalina Mottus, on the part of the defendant.

1. How old are you?
2. How long have you resided in and about the city of Mobile?
3. Were you acquainted with the King's bake-house lot in Spanish times? Did you at any time reside on that lot? When, and for what purpose did you reside on it, and for how long a time?
4. Did you live near the lot for many years in Spanish times? In what part of the city did you reside?
5. Can you describe the King's bake-house lot in Spanish times? How was it separated from the lot on the south? Who occupied and who claimed the lot on the south?
6. What was the size and description of the King's bake-house lot? Is it the same lot now in possession of the defendants? Have you examined the lot in the occupation of the city? How does the present south boundary agree with the same boundary in Spanish times?
7. State all you know that will benefit the defendants.

CAMPBELL AND CHANDLER.

In pursuance of the commission hereunto annexed, issued from the circuit court of Mobile county, in a cause pending in the said court, in which John Doe on the demise of the heirs of Robert Farmer is plaintiff, and the Mayor, Aldermen, and Common Council of the city of

Mobile, and Joseph Clements, are defendants. I, one of the commissioners named in the said commission, have caused Catalina or Catharine Mottus to come before me in the said city, at her residence, on this 19th day of December, 1844, at the time specified in the commission, and the said witness being duly sworn to testify and depose the whole truth, did answer and depose as follows:

Answer to interrogatory No. 1. I am sixty-four years old.

Answer to interrogatory No. 2. Ever since I was born I have lived in Mobile.

Answer to No. 3. I was acquainted with the King's bake-house lot. I lived there with my husband, Mr. Antonio Espijo, about three years, and about two years after his death. Mr. Espijo died in the year 1805 or 1806. My husband had the contract from the Spanish government to furnish the troops with bread, and this contract was continued with me after his death. The bake-house lot is situate at the corner of Conti and St. Emanuel streets.

Answer to No. 4. Two years after my husband's death I moved to my home on Government street, near the river. There I was married to Mr. Mottus, and resided there until the year 1819 or 1820.

Answer to No. 5. The King's bake-house lot when I lived there in the Spanish times fronted on Conti street, running back on St. Emanuel street, to a fence which formed the southern boundary, and separated it from the lot occupied as a Government house by the several commandants of the city or fort. Such as Maxan, Orsono, and Perez.

Answer to No. 6. I do not know the size of the lot; the description is, bounded on the south by the Government-house lot, on the east by the lot of Duplantier, on the north by Conti street, on the west by St. Emanuel street. The house was of one story, containing two rooms, built of brick, and a frame building, used as the bake-house, with two large ovens, of sufficient size to hold 700 rations of bread. The yard run on the south and east side of the house. The well was on the east side of the lot, on the side of Duplantier, and about midway between Conti street and St. Emanuel street, on the south. The east fence run along the well. Occasionally the persons occupying the Government house came through the south fence to get water. It is the same lot where now the mayor's office and guard-house now are. I have examined the lot yesterday, and, from my recollection of it, and more particularly by looking at the old Spanish lot on the west side of St. Emanuel street, then occupied by Mr. Hidgem, I believe the present south boundary to be on the same line that it was during the Spanish times.

Answer to No. 7. I know of nothing more.

CATALINA MATTUS.

I, John J. Wanroy, a commissioner named in the foregoing commission, do certify, that I have examined Catalina Mottus, as a witness in the cause stated in the caption, on her oath; that the answers made by her were taken down in writing by me, and that she subscribed the same in my presence.

JOHN J. WANROY.

Deposition of Thaddeus Sanford.

Interrogatories to be propounded to Mr. Sanford, for the defendants.

1. When did you arrive in the city of Mobile?

2. Do you know the location of the bake-house lot in the city of Mobile? Did you have any thing to do, in 1824, with ascertaining its limits?

3. Will you state how its limits were ascertained, and what measures were taken to fix and define the limits of the lot? What led to the ascertainment of the limits of the lot?

4. Were you acquainted with Thomas L. Hallett and Louis de Vobiscey? Did they at any time claim the lot to the south of the bake-house lot? Will you state whether they controverted the boundaries ascertained by the city?

5. Was the conduct of the corporation open, public, and notorious? State what was done on its part.

6. State at length all that you know that would tend to show that the corporation of Mobile have not entrenched upon the rights or property of others in fixing the lines of the bake-house lot.

CAMPBELL & CHANDLER.

STATE OF ALABAMA, *Mobile county:*

By virtue of a dedimus potestatem, issuing from the honorable the circuit court of the State of Alabama, at Mobile, to take the testimony of Thaddeus Sanford, a witness in a cause now pending in the said court, wherein John Doe, on the demise of the heirs of Farmer, is plaintiff, and Richard Roe, the Mayor and Aldermen of the city of Mobile, are defendants, I, Alexander McKinstry, have called and caused to come before me, on this the 16th day of December, A. D. 1844, at the residence of the said Thaddeus Sanford, on the corner of Royal and Monroe streets, between the hours of 8 o'clock A. M. and 4 o'clock P. M., (the said dedimus being hereunto annexed,) who, being duly cautioned and sworn on the Holy Evangelists to tell the truth, the whole truth, and nothing but the truth, in answer to such interrogatories as may be propounded to him, which are hereunto annexed, deposes and says:

In answer to the first interrogatory. That he arrived in the city of Mobile in the month of November, A. D. 1822.

In answer to the 2d interrogatory. That he is acquainted with the location of the lot commonly called the bake-house lot, and took a part as one of the aldermen of the city of Mobile in ascertaining its location and limits in the autumn (to the best of his recollection) of the year 1824.

In answer to the 3d interrogatory. That Congress had relinquished in the summer previous several pieces of property, among others the lot in question, to the city of Mobile, and the board of mayor and aldermen proceeded to take the necessary steps to obtain possession of the said property; upon inquiry it was found that the town council, (a previous organization of the municipal government of the place,) at some

time previous, had given to the heirs of Farmer permission to use a portion of the southern portion of the bake-house lot, which is situated on the southeast intersection of Conti and Saint Emanuel streets; that the said heirs of Farmer had enlarged their boundaries in pursuance of the permission, for the purpose of cultivating a garden; and the corporation determined to repossess themselves of the said lot. One A. F. Stone was in possession of the lot claimed by the heirs of Farmer, and the portion thus yielded to them, representing himself, and generally recognised, as the agent for the owners of the lot; he assented to the claim of the corporation, and the boundary was removed to its original position; that is, the position previous to the aforesaid permission to use and occupy, granted by the town council. That boundary was determined by a broken line of old pickets, decayed remnants of which remained at the back part of the lot, and were the portion of an old fence that pointed from the eastern side of the lot towards St. Emanuel street; directly on the line of one of these fences was an old well, but whether it was the original fence which crossed this well, or that subsequently erected by the heirs of Farmer, with the consent of the town council, the deponent cannot with certainty say, though he is strongly induced to think that it was the latter. Could the locality of that well be ascertained, this question might be determined, inasmuch as the removal of the fence in 1824, to what was considered to be the true south boundary of the bake-house lot, increased its front on St. Emanuel street some forty or fifty feet, and perhaps more. The deponent thinks the entire front of the lot, as enclosed by the corporation in 1824, must have been from one hundred and thirty to one hundred and fifty feet on St. Emanuel street.

In answer to the 4th interrogatory. That he was well acquainted with Thomas S. Hallett, and does not recollect that at that time he preferred any claim to the said lot; he says that he had no acquaintance with De Vobiscey personally, but knew him well by reputation. It was generally considered that Stone represented his possession of the premises to be De Vobiscey's possession. There was no opposition from any person or persons to the action of the corporation; on the contrary, Mr. Stone expressly assented to it.

In answer to the fifth interrogatory. That he does not recollect that there was any attempt at surprise, or to take forcible possession of the premises; on the contrary, the action of the corporation, as far as he was concerned, was open, public, and notorious, and he believes the action of the board to have been the same.

In answer to the sixth interrogatory. That, as far as he knows, this interrogatory is disposed of by his previous answers.

T. SANFORD.

And the testimony of the said Thaddeus Sanford having been reduced to writing by me, and read over by him in my presence, and by myself aloud to him, and confirmed in every respect, was signed in my

presence as above, and sworn to, this the sixteenth day of December, A. D. 1844.

Given under my hand and seal, this the 16th day of December, A. D. 1844. ALEX. McKINSTRY, [SEAL.]

Commissioner.

Deposition of Nicholas Weeks, senr.

Interrogatories to be submitted to Nicholas Weeks, senr., on the part of the defendant:

1. How old are you?
2. Did you at any time reside in the city of Mobile prior to 1813? How long did you so reside there?
3. Did you own any property in the city of Mobile? Where was it situated? Did you reside on it?
4. Were you familiarly acquainted with the lot known as the King's bake-house lot? In what portion of the town was it situated?
5. Will you describe the location of that lot?
6. How was that lot situated with respect to the lot south? How was it separated from it? Was the lot known as Orsono's, and afterwards as the lot of Don Miguel Eslava, enclosed? Do you remember its size?
7. Was the bake-house lot enclosed? What kind of a fence surrounded it?
8. Did the lot in Spanish times come south of a well? Was there more than one on the lot?
9. Have you ever seen the lot since Spanish times? Is the present location the same as that in Spanish times?

CAMPBELL & CHANDLER.

By virtue of the commission hereunto annexed, issued from the circuit court of Mobile county in the case pending in the said court, wherein John Doe, on the demise of the heirs of Farmer, is plaintiff, and the Mayor, Aldermen, and Common Council of Mobile, are defendants, I have caused Nicholas Weeks to come before me, at his residence in Baldwin county, on Monday, the 16th day of December, 1844, between the hours of eight o'clock, A. M., and four o'clock, P. M.; and the said witness having been duly sworn to testify and depose the whole truth, as follows:

The witness answers to the first interrogatory. I was seventy-three years of age in May last past.

The witness answers to the second interrogatory. I resided in Mobile from 1798 to 1808.

The witness answers to the third interrogatory. I owned and resided on a lot southeast corner of Conti and Royal streets.

The witness answers to the fourth interrogatory. I knew the premises known as the King's bake-house lot, but knew nothing of the size of the lot. It was situated in the southern part of the city.

The witness answers to the fifth interrogatory. The King's bake-house was situated on the southeast corner of Conti and St. Emanuel streets, bounded on the east by Mrs. Joiers, and on the south by Orsono's lot.

The witness answers to the sixth interrogatory. The King's bake-house was situated north of Orsono's, afterwards Don Miguel Eslava's lot. It was separated from the former by a picket fence. Orsono's lot was enclosed; I do not recollect its size. I believe that Orsono had the fence between him and the lot of the bake-house removed further north, making his lot larger, but how much I do not know.

The witness answers to the seventh interrogatory. The bake-house lot was enclosed; I believe the fence was pickets in the ground.

The witness answers to the eighth interrogatory. I know nothing about a well or wells on said lot.

The witness answers to the ninth interrogatory. I cannot say any thing about the dimensions of the lot. I have frequently passed by the old Spanish bakery since the Spanish times. It was situated where now stands the mayor's office, corner of Conti and St. Emanuel streets. Of the size of the lot I can say nothing.

NICH'S WEEKES.

I, Nicholas Weekes, junr., do certify, that in pursuance of the annexed commission, I have caused Nicholas Weekes, senr., to come before me at his residence, in Baldwin county, and did there, on the 16th day of December, 1844, between the hours of 8 o'clock, A. M., and 4 o'clock, P. M., of that day, examine him as a witness, on his oath, in the case aforesaid. The answers made by said witness I took down in writing, and having caused him to subscribe the same in my presence, I do certify the same to the circuit court, together with the commission.

N. WEEKES, Jr., *Commissioner*.

THE STATE OF ALABAMA:

In the supreme court of said State, and at June term of said court, one thousand eight hundred and forty-five, came the plaintiff in error, by attorney, and filed an assignment of errors as follows, to wit:

The plaintiff in error says, that the court below erred, as shown by the bill of exceptions.

TEST, *Att'y for pl'ff in error*.

And thereupon defendant in error, by his attorney, filed his joinder in error, as follows:

There is no error in the record.

JOHN A. CAMPBELL, *for defendant*.

And on the 4th day of June, being a day of the June term, one thousand eight hundred and forty-five, of the said supreme court:

Present, all the judges of said court.

The following proceedings were had in the cause first aforesaid, to wit:

Doe, ex dem. Heirs of Farmer
vs.
The Mayor and Alderman of Mobile.

From Mobile circuit court.

This day again came said parties, by their attorneys, and the record in this cause, and the matters assigned for error therein, having been argued and examined, and mature deliberation thereon had, it now seems to the court, that in the record and proceedings of said circuit there is no error. It is therefore now considered that the judgment of said circuit court be in all things affirmed, and that defendant in error recover of the plaintiffs the costs of this court and of said circuit court.

The State of Alabama:

I, James B. Wallace, clerk of the supreme court of the said State, do hereby certify, that the foregoing is a correct transcript of the record filed, and proceedings had in said court, in the cause first above mentioned, the originals of which are on file in my office, and remain of record.

In testimony whereof I have hereto set my hand and private seal, having no seal of office, at office in the Capitol, this fifteenth day of September, in the year of our Lord one thousand eight hundred and forty-seven.

JAMES B. WALLACE,
Clerk supreme court, Alabama.

Filed 24th December, 1847.